UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PAUL BASHKIN, Plaintiff, v. SAN DIEGO COUNTY, HOWARD KLUGE, BRET GARRETT, & DOES 1-100, Defendants.	Civil No. 08-CV-1450-WQH(WVG) ORDER ON PLAINTIFF'S EX PARTE STATEMENT REGARDING CONTINUING DISCOVERY DISPUTES (DOC. NO. 80)

Before the Court is Plaintiff's *ex parte* statement (Doc. No. 80) on the status of continuing discovery disputes, as well as Defendants' response (Doc. No. 82). Having carefully considered all of the discovery disputes presently before the Court, as well as the disputes on which the Court reserved judgment in its November 3, 2010, Order (Doc. No. 77), the Court hereby rules on the disputes and orders the parties to proceed consistently with this Order.

I. BACKGROUND

On October 12, 2010, The Honorable William Q. Hayes granted Plaintiff's motion for leave to amend his Complaint. Specifically, Plaintiff was allowed to make additional allegations to cure a pleading deficiency in his second cause of action ("Conspiracy to

Interfere with Civil Rights" pursuant to 42 U.S.C. § 1985). Plaintiff filed his First Amended Complaint on October 22, 2010. Defendants responded by Motion to Dismiss, which is currently pending before Judge Hayes.

Over the course of the past year, the parties have been embroiled in a series of continuing and increasingly contentious discovery disputes. On September 10, 2010, the Court convened yet another discovery conference to address the state of discovery and to resolve any continuing disputes. Plaintiff, Paul Bashkin, appeared on his own behalf, and James M. Chapin appeared on behalf of the defendants, San Diego County, Howard Kluge, and Bret Garrett (collectively, "Defendants"). Based on the parties' inability to interact without the Court's oversight, the Court supervised the parties as they met and conferred. The Court then ordered the parties to further meet and confer and submit a joint statement on continuing and resolved disputes. The parties' ensuing joint statement (Doc. No. 74) indicated that Defendants agreed to provide responses to sixteen (16) disputed topics, but indicated that eighteen (18) disputed items remained.

On November 3, 2010, the undersigned issued an Order that required Defendants to respond to the discovery requests to which they had agreed to respond. (Doc. No. 78.) The Court reserved judgment on the 18 remaining disputed items so that they could be considered together with Plaintiff's objections, if any, to Defendants' responses to the 16 undisputed items. On December 10, 2010, Plaintiff filed an *ex parte* statement that contained his objections to Defendants' supplemental responses. (Doc. No. 78.) Plaintiff apparently attempted to meet and confer with Defendants,

who did not respond. Defendants filed their response to Plaintiff's statement on December 16, 2010. (Doc. No. 82.) Rather than address the objections in Plaintiff's *ex parte* statement, Defendants tersely stated that they have fully answered all interrogatories and no additional information exists. The Court now rules on all of the continuing and reserved disputes.

II. RULINGS

A. Source of the Dispute: The Parties' Inability to Cooperate

The source of the parties' continuing dispute is two-fold. First, Plaintiff over-analyzes Defendants' responses and continually complains that Defendants' responses are evasive, incomplete, vague, "obstreperous," and lack sufficient detail. He seeks narrative recitations of each and every possible detail and even narrative re-creations of information that is contained in books and other printed materials. For their part, Defendants provide guarded responses that are devoid of much detail, while simultaneously protesting that Plaintiff seeks every possible minute detail. Defendants then provide minimal additional details, but only when ordered by the Court - and even then their responses remain vague and devoid of much detail. After carefully reviewing Plaintiff's interrogatories, Defendants' initial responses, Plaintiff's initial objections, Defendants' amended responses, and Plaintiff's current objections, the Court finds that several of Defendants' responses appear adequate given the wording of the requests, while some of Plaintiff's objections have merit. Ultimately, both sides are simultaneously in the right and in the wrong.

In the written discovery process, parties are not entitled to each and every detail that could possibly exist in the universe of

facts. IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 321 (D. Kan. 1998) ("To require specifically each and every fact and application of law to fact, however, would too often require a laborious, time-consuming analysis, search, and description of incidental, secondary, and perhaps irrelevant and trivial details. The burden to answer then outweighs the benefit to be gained."). Nor is Plaintiff entitled to a narrative account of Defendants' case. See Lucero v. Valdez, 240 F.R.D. 591, 594 (D. N.M. 2007) ("Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents."); see also Gregg v. Local 305 IBEW, 2009 U.S. Dist. LEXIS 40761 (N.D. Ind. May 13, 2009) ("To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.") (citing IBP, Inc.).

Further, to the extent Plaintiff seeks every minute detail and narratives about the subject incident and every possible surrounding circumstance, written discovery is not the proper vehicle to obtain such detail. Johnson v. Couturier, 261 F.R.D. 188, 192 (E.D. Cal. 2009) ("[I]t is not the purpose of early interrogatory discovery to have one side or the other give a complete rendition of each and every minute, factual detail which will surface at trial."); IBP, Inc., 179 F.R.D. at 321 ("Other discovery procedures, such as depositions and production of documents, better address whatever need there be for that kind of secondary detail."). Plaintiff often uses the written interrogatory process essentially as a substitute for depositions, engages in

hyper-critical word-play, and strenuously objects whenever the responses are not worded as he wishes. However, interrogatories and depositions serve different functions:

> Written interrogatories are rarely, if ever, an adequate substitute for a deposition when the goal is discovery of a witness' recollection of conversations. . . . Only by examining a witness live can a lawyer use the skills of his trade to plumb the depths of a witness' recollection, using to advantage not only what a witness may have admitted in answering interrogatories, but also any new tidbits that usually come out in the course of answering carefully framed and pin-pointed deposition questions. Written interrogatories are not designed for that purpose; pointed questions at deposition are the only effective way to discover facts bottled up in a witness' recollection.

Shoen v. Shoen, 5 F.3d 1289, 1297 (9th Cir. 1993).

The nature of Plaintiff's requests notwithstanding, Defendants have engaged in dilatory tactics. While simultaneously accusing Plaintiff of hyper-sensitive word-play, Defendants engage in improper tactics on several instances, as the Court will elaborate below. As just one example, Defendants keep several of their responses general, lacking in any useful detail, and only provide more detail when ordered to do so by the Court--and sometimes not even then. Further, at times, Defendants fail to address the call of Plaintiff's question and answer a question not asked.

The parties' behavior in this case is neither acceptable nor productive. Therefore, while the Court generally refrains from shaping the substance of discovery responses or providing such guidance, IBP, Inc., 179 F.R.D. at 319, the Court must do so in this case in light of the entrenched positions the parties have taken and Defendants' sometimes evasive and dilatory responses. The Court expects that this Order will be its final word on the disputes

before it, and the Court will consider sanctions if the parties engage in further deliberate failures to obey the Court's Order or engage in further dilatory tactics.

A. The Continuing Disputes

Because the disputed interrogatories are currently scattered among various entries on the Court's docket, the Court methodically consolidates and rules on each disputed item below.

1. Kluge, Special Interrogatory No. 1

Plaintiff propounded the following interrogatory: "Describe in detail any and all training that YOU had received as a San Diego [S]herriff's [D]eputy as of August 8, 2006, with regard to investigating an individual suspected of violating California Penal Code § 602(o)." (Doc. No. 64-3 at 2.)

Defendant Kluge's first response: "All my training with regards to investigating an individual suspected of violating California Penal Code [Section] 602(o), was obtained during training scenarios and material given out to all cadets during my attendance at the San Diego Regional Law Enforcement Academy training course, during patrol phase training with a San Diego Sheriff's Department Corporal or Filed [sic] Training Officer, and by reviewing the trespassing sections of the California Penal Code book." (Id.)

Plaintiff's objection: "This response is non-responsive and frivolous. The interrogatory sought a detailed description of all of the training Kluge received, yet nowhere in the response does Kluge describe any of his training, etc., much less with any specificity. This is exactly the type of response to which the Court ordered defendants Garrett and San Diego County to provide amended responses. Moreover, the 'material' referenced in Kluge's

response is so general that Bashkin cannot determine if it was included in Kludge's response to Bashkin's Request for Production of Documents, so as to render those responses deficient, as well." (Id. at 2-3.)

Kluge's second response: "All my training with regards to investigating an individual suspected of violating California Penal Code [Section] 602(o), was obtained during training scenarios and material given out to all cadets during my attendance at the San Diego Regional Law Enforcement Academy training course, during patrol phase training with a San Diego Sheriff's Department Corporal or Filed [sic] Training Officer, and by reviewing the trespassing section of the California Penal Code book. I can't restate any specifics about such training without identifying a specific scenario." (Doc. No. 80, Ex. C at 1-2 (emphasis added to highlight new response).)

Plaintiff's second objection: "Kluge's Supplemental Response is obstreperous. Kluge agreed, through his counsel, to correct the deficiencies articulated by Bashkin in [his first objection]; otherwise, this would have remained a disputed response left for the Court to resolve. The interrogatory sought a detailed description of all of the training Kluge received, yet nowhere in the response does Kludge describe any of his training, etc., much less with any specificity. The only change made in Kluge's supplemental response was the addition of the final sentence: 'I can't restate any specifics about such training without identifying a specific scenario.' This is pure nonesense [sic]. In fact, Kluge can and must provide specifics about his training because: (a) that is what he agreed to provide; and (b) Bashkin has identified the 'specific

scenario': Kluge's alleged probable cause to arrest Bashkin for trespassing, which comprises the defense in this case! Therefore, Kluge must describe his training in detail, as agreed upon, especially as it correlates to the unspecified 'training scenarios and material' referenced in both his original and amended responses." (Doc. No. 80 at 3 (citations and bold emphasis omitted; underling in original).)

The Court's ruling: This interrogatory is a more specific version of Special Interrogatory No. 4, below, which asks for the same information on "trespassing" in general rather than Section 602(o) specifically. Since "trespassing" includes various Penal Code sections, including Section 602(o), this interrogatory is redundant. Defendants shall not be required to further respond to Interrogatory No. 1, but must respond to Interrogatory No. 4 as ordered below.

2. Kluge, Special Interrogatory No. 4

Plaintiff propounded the following interrogatory: "Describe in detail any and all training YOU received as a San Diego County [S]heriff's [D]eputy as of August 8, 2006, with regard to investigating an individual suspected of trespassing." (Doc. No. 64-3 at 4.)

Defendant Kluge's first response: "See response to [Special Interrogatory] #1 above." (Id.)

Plaintiff's objection: "See [objection to Special Interrogatory No. 1]. Additionally, this is not the same as No. 1." (Id.)

Kluge's second response: "See response to [Special Interrogatory] #1 above." (Doc. No. 80, Ex. C at 3.)

Plaintiff's second objection: "Kluge's Supplemental Response is obstreperous. Kluge agreed, through his counsel, to correct the deficiencies articulated by Bashkin in [his first objection] and to provide a separate response (from his response to #1), since these were not identical interrogatories. However, the supplemental response still only references his response to #1, with the only change therein being the addition of the final sentence: 'I can't restate any specifics about such training without identifying a specific scenario.' This is pure nonesense [sic]. In fact, Kluge can and must provide specifics about his training because: (a) that is what he agreed to provide; and (b) Bashkin has identified th 'specific scenario': Kluge's alleged probable cause to arrest Bashkin for trespassing, which comprises the defense in this case! Therefore, Kluge must describe his training in detail, as agreed upon, especially as it correlates to the unspecified 'training scenarios and material' referenced in both his original and amended responses." (Doc. No. 80 at 4 (citations and bold emphasis omitted; underling in original).)"

The Court's ruling: KLUGE IS ORDERED TO RESPOND TO THE INTERROGATORY IN GOOD FAITH. This interrogatory is a prime example of a question that is more suitable as a deposition question than one propounded in writing due to the amount of information it requests. However, it is also a prime example of where Kluge could provide a substantive answer but refuses to do so. On the one hand, Plaintiff is asking for a narrative of all of Kluge's training. On the other hand, Defendant indicates that he received training on trespass crimes in the academy and through field training, but

provides no detail whatsoever of any of the training. As has been the practice, his response remains general.

Moreover, the indication that he cannot describe any of his training without Plaintiff's identification of specific scenarios is dilatory and evasive. That representation is suspect since the interrogatory's subject matter, "investigating an individual suspected of trespassing," is sufficiently narrow and Defendants have provided specific academy training materials in other interrogatory responses that address trespassing investigations.

To the extent that Kluge received specific training during field training (*e.g.*, received a radio call to investigate a trespass with his field training officer), he should indicate as much and describe the specific radio call or incident that provided him the training opportunity. In other words, Kluge shall identify the training he received during field training since he is the one with that knowledge. However, because by its very nature field training is experience-based and dependent on whatever radio call the training unit receives, it is entirely possible that Kluge may not have received a trespass call for the duration of his field training. If that is the case, Kluge should state so. If he cannot remember whether he received such a call (or received such a call but cannot remember the details) because field training occurred long ago, he should state so. What he may not do is state generally that he received field training on trespass investigations and leave Plaintiff without any details.

To the extent that Kluge received any training on trespass investigation in the academy, although Plaintiff is not entitled to a narrative response, he is entitled to know what that training

consisted of. If all of the training was contained in books or other printed materials, Defendant is ORDERED to produce these to Plaintiff in paper format. If Kluge received additional academy training that is not contained in books or other printed materials, he is ORDERED to describe that training as his memory permits.

3. Kluge, Special Interrogatory No. 9

Plaintiff propounded the following interrogatory: "Describe in detail each and every policy or procedure of the San Diego Sheriff's Department as of August 8, 2006, with regard to how its deputies were supposed to document suspected crimes." (Doc. No. 64-3 at 5.)

Defendant Kluge's first response: "The question is too broad in order for me to properly respond. However if Mr. Bashkin had been placed under citizen's arrest or arrest by me for violating any section of the California Penal [C]ode trespassing laws [sic] an arrest report and a citation would have been completed/issued to Mr. Bashkin for the misdemeanor offense. Mr. Bashkin was not placed under arrest at any point, but was repeatedly advised that he risked being placed under arrest if he did not comply with the lawful order to leave the Barona Casino property at once." (Id. at 6.)

Plaintiff's objection: "This response is evasive, incomplete, and non-responsive. On its face, the interrogatory is not 'too broad'; there is no explanation as to why it is 'too broad'; and no proper objection was posited in support of that position. It is a perfectly legitimate and relevant question that requires a response on the merits; either there are policies and/or procedures for documenting suspected crimes or there are not. Moreover, the question did not ask about documenting a 'crime'; it sought

information about documenting a 'suspected' crime.' If there are no policies or procedures for 'documenting a suspected crime,' then Kluge must state so. Conversely, if there are, then he must answer the interrogatory and 'describe' those policies and procedures 'in detail.'" (Id.)

Kluge's second response: "The question is too broad in order for me to properly respond. However if Mr. Bashkin had been placed under citizen's arrest or arrest by me for violating any section of the California Penal [C]ode trespassing laws [sic] an arrest report and a citation would have been completed/issued to Mr. Bashkin for the misdemeanor offense. Mr. Bashkin was not placed under arrest at any point, but was repeatedly advised that he risked being placed under arrest if he did not comply with the lawful order to leave the Barona Casino property at once. No policies exist for documenting potential crimes, only actual crimes and arrests." (Doc. No. 80, Ex. C at 3 (emphasis added to highlight new response).)

Plaintiff's second objection: "Kluge's Supplemental Response is obstreperous. Kluge agreed, through his counsel, to correct the defects articulated by Bashkin in [his first objection]; otherwise, this would have remained a disputed response left for the Court to resolve. Specifically, he agreed to provide an amended response that deleted all of the irrelevant verbiage and simply states that: 'There were no policies in effect at that time for documenting ***suspected*** crimes.' Instead, his supplemental response incorporated the original irrelevancies and added the following non-responsive sentence: 'No policies exist for documenting ***potential*** crimes, only actual crimes and arrests.' Kluge must respond pursuant to the

parties' agreement." (Doc. No. 80 at 4-5 (some emphasis omitted; remaining emphasis in original).)

The Court's ruling: This interrogatory is an example of one that is unsuitable as a written interrogatory and should have been a request for document production instead. Quite simply, Plaintiff is not entitled to Kluge's re-creation of the Sheriff's written policies and procedures ("P&Ps"). Written P&Ps speak for themselves and their production is sufficient. Requiring Kluge to summarize in narrative form what Plaintiff can read himself is unduly burdensome and unreasonable. Moreover, Plaintiff's second objection demonstrates his practice of hyper-critical dissection of Defendants' responses.

In any event, Kluge directly responded to this interrogatory: No such policy exists. That response is clear and directly responsive to the interrogatory. Kluge shall not be compelled to further respond.

4. <u>Kluge, Special Interrogatory No. 10</u>

Plaintiff propounded the following interrogatory: "Identify with particularity any limitations placed on the amount of information (e.g., the number of words, characters or letters) that YOU could include in the August 8, 2006 'Unit History' ([a.k.a.] 'CAD') disposition YOU made of the INCIDENT." (Doc. No. 64-3 at 6.)

Defendant Kluge's first response: "There are 'character' limitations placed on the amount of information that can be written down when making a disposition in regards to an event on a San Diego Sheriff's Department Mobile Data Computer in patrol vehicles. The 'Unit History' or 'CAD' disposition requires some documentation as to the action(s) taken while at the scene of a call or observed

activity. The information should include the person(s) contacted, where contacted and why." (Id.)

Plaintiff's objection: "The response is frivolous, evasive and non-responsive. The request did not ask '**if**' there were character limitations placed on the amount of information included in the CAD; it asked what were those limitations. In his deposition . . . , Kluge testified that '[y]ou're limited as far as what you can put in there because it will only accept so many characters or words or letters, so you have to be extremely brief.' Thus, this interrogatory seeks information as to those specific limitations. Respondent stated there were 'character' limitations; so, what are those limitations? Where are those limitations documented (in a policy manual, regulation, etc.)? Moreover, regarding that portion of Kluge's response referencing the 'Unit History' or 'CAD' documentation or information required, what is the specific information required and where are those requirements documented?" (Id. at 7 (emphasis in original).)

Kluge's second response: "There are 'character' limitations placed on the amount of information that can be written down when making a disposition in regards to an event on a San Diego Sheriff's Department Mobile Data Computer in patrol vehicles. I don't know the exact limit, but at that time it wasn't much. The 'Unit History' or 'CAD' disposition requires some documentation as to the action(s) taken while at the scene of a call or observed activity. The information should include the person(s) contacted, where contacted and why." (Doc. No. 80, Ex. C at 3-4 (emphasis added to highlight new response).)

Plaintiff's second objection: "Kluge's Supplemental Response is obstreperous. Kluge agreed, through his counsel, to correct the deficiencies articulated by Bashkin in [his first objection], including to: (a) specify the exact limitations placed on the amount and type of information that could be contained in Kluge's 'Unit History' or 'CAD' disposition; (b) identify the origin of those limitations; i.e., whether they are set forth in some policy or are purely a function of the 'CAD' device itself; and (c) identify the specific policy that supports the last two sentences of his response: 'The "Unit History" or "CAD" disposition *requires* some documentation as to the action(s) taken while at the scene of a call or observed activity. The information *should* include the person(s) contacted, where contacted and why.'

Instead, the only change Kluge made in his response was to add the representation that '**I don't know the exact limit, but at that time it wasn't much.**' This supplementation not only breaches the parties' agreement, but is equivocal and, most likely, fraudulent. On the one hand, Kluge asserts that there is a 'character' limit; yet on the other hand, he now represents that he does not know what that limit is, thus begging the question: then how does he know that there is a limit and that the limit 'wasn't much'?!

In his deposition, Kluge claimed that he did not contemporaneously document key elements of the defense; e.g., Bashkin's alleged refusal to leave Barona and Kluge's alleged non-forceful 'arm guiding' of Bashkin, because of the character limitations placed on his CAD disposition. It is undisputed that Bashkin is entitled to discover exactly what those limitations were and decide how best to process that information. If, in fact, Kluge is lying,

and that the CAD either had no limitations or there were many more characters that Kluge could have used, then Bashkin is entitled to utilize this information to his advantage at trial.

The bottom line is that Kluge either knows the exact character limitations placed on his CAD disposition or could have easily obtained that information through defendant San Diego County, Kluge's employer and a co-defendant in this lawsuit. Regardless, Kluge agreed to provide this information in his supplemental response to this interrogatory, yet failed to do so. The information sought by Bashkin in this interrogatory is vital to the prosecution of this lawsuit, going directly to defendants' credibility and the impeachment thereof, regarding a material issue in this lawsuit." (Doc. No. 80 at 5-6 (all emphasis in original).)

The Court's ruling: Kluge shall not be compelled to further respond. Kluge, as a user of the CAD (not the inventor, programmer, or IT professional), has stated that he knows there is some sort of character limit but does not know what the specific limit is. His knowledge of some form of limit is presumably based on his past experience as he has tried to input an entry that exceeded the character limit. Plaintiff insists that Kluge must know what the CAD character limit is and demands a specific number. However, given that Kluge is merely a user of the CAD system and has represented that he does not know the exact character limit, his second answer is responsive. Ultimately, Kluge is not the correct party to whom this interrogatory should be directed, as Plaintiff himself seems to recognizes ("[Kluge] could have easily obtained that information through defendant San Diego County, Kluge's employer and a co-defendant in this lawsuit").

5. Kluge, Special Interrogatory No. 23

Plaintiff propounded the following interrogatory: "Identify with particularity any money or things of value that the San Diego County Sheriff's Department has ever received from BARONA or any of its representatives." (Doc. No. 64-3 at 15.)

Defendant Kluge's first response: "I can't answer this question since it requests personal knowledge and information regarding any possible money or things of value exchanged between the San Diego Sheriff's Department, the Barona Casino, or its representatives. I am a Detective with the San Diego Sheriff's Department and the question is not something I would know in my current or past job position(s) with the County of San Diego." (Id.)

Plaintiff's objection: "The response is purposely evasive. Respondent must answer the question, if he is knowledgeable of 'any money or things of value that the San Diego County Sheriff's Department has ever received from BARONA or any of its representatives.' As to the last sentence of the response, the question is not seeking information about something that respondent 'might' know about his 'current or past job position(s) with the County of San Diego.' It seeks information regarding respondent's actual knowledge, irrespective of what is 'generally' known by an employee in his job capacity." (Id. (emphasis in original).)

Kluge's second response: "I do not know. I am a Detective with the San Diego Sheriff's Department and the question is not something I would know in my current or past job position(s) with the County of San Diego." (Doc. No. 80, Ex. C at 5.)

Plaintiff's second objection: "Kluge's Supplemental Response is obstreperous. Kluge agreed, through his counsel, to either:

(a) identify any money or things of value that the San Diego County Sheriff's Department has ever received from BARONA or any of its representatives; or (b) simply state that 'I do not know of any money or things of value that the San Diego County Sheriff's Department has ever received from BARONA or any of its representatives.' Instead, Kluge now responds by stating only that '**I do not know.**' Without more (e.g., I do not know of any . . .), the response remains evasive and ambiguous; e.g., it could mean that 'I do not know the specifics,' or 'I do not know how much the San Diego County Sheriff's Department has received.'" (Doc. No. 80 at 6 (emphasis in original).)

The Court's ruling: Kluge shall not be compelled to further respond. Plaintiff's continued hyper-critical analysis of Kluge's second response is a clear example of his pattern of conduct in this case. He is not satisfied with, "I do not know," and demands that Kluge state, "I do not know of any money or things of value that the San Diego County Sheriff's Department has ever received from BARONA or any of its representatives." However, the response Plaintiff demands requires Kluge to have actual knowledge that the Sheriff's Department either did or did not receive money or goods from Barona. Kluge states he has insufficient knowledge to answer this question either way. His answer is responsive to the interrogatory. Plaintiff may not dictate the exact wording of Kluge's response.

6. <u>Garrett, Special Interrogatory No. 12</u>

Plaintiff propounded the following interrogatory: "Please DESCRIBE what YOU were doing at all times during the INCIDENT." (Doc. No. 64-4 at 8.)

Defendant Garrett's first response: "See response to Interrogatory No. 1" (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant must provide more detail regarding his actions at the time of the incident. However, to the extent that the response to Interrogatory 9 or 11 is sufficiently detailed, the response need not overlap." (Doc. No. 59 at 5.)

Garrett's second response after the Court's order: "I was observing Deputy Kluge assess Plaintiff for 5150 and listened as the casino security staff and Deputy Kluge requested Plaintiff to leave the premises. I walked outside with Plaintiff and Deputy Kluge to the patrol car. My complete statement to Internal Affairs and the IA Report have been provided to Plaintiff and my statement is summarized in the report at pp. 24-27." (Id.)

Plaintiff's objection: "First, the response is in violation of the court order that '[d]efendant must provide more detail. . . .' The few details actually provided are sketchy and conclusory at best. Second, respondent cannot incorporate by reference his 'complete statement to Internal Affairs,' given that: (a) the IA Report only contains a summary of that statement; (b) it has not been authenti-cated or properly incorporated into his response; and (c) the court order did not allow him to do so." (Id.)

Garrett's third response: "I was observing Deputy Kluge assess Plaintiff for 5150 and listened as the casino security staff and Deputy Kluge requested Plaintiff to leave the premises. I left the room several times to ask Barona staff about Plaintiff's statements regarding suicide. I walked outside with Plaintiff and

Deputy Kluge to the patrol car. My complete statement to Internal Affairs and the IA Report have been provided to Plaintiff and my statement is summarized in the report at pp. 24-27." (Doc. No. 80, Ex. D at 2 (emphasis added to highlight new response).)

Plaintiff's second objection: "Garrett's Second Supplemental Response is obstreperous and in direct violation of the prior court order. The only change is the addition of the following sentence: 'I left the room several times to ask Barona Staff about Plaintiff's statements regarding suicide.' Garrett agreed, but has failed, to cure the defects addressed in the court order and set forth in Bashkin's [first objection]. The added information only exacerbates the defect, because this new 'fact' is even more sketchy than the existing ones.

Garrett was ordered and agreed to answer the interrogatory as written, which is to 'describe' in detail (as defined by Bashkin in the set of interrogatories served on Garrett) what he was doing 'at all times' [sic] during the incident.' Since none of Garrett's responses to this interrogatory claim an impaired recollection, and since Garrett's liability in this lawsuit is dependent upon his failure to 'intercede' when Kluge violated Bashkin's constitutional rights, if Garrett 'had an opportunity to intercede,' then his response remains woefully inadequate.

Moreover, if Garrett is going to rely upon his 'complete statement to Internal Affairs,' despite the court order, then he must set forth that 'complete statement to Internal Affairs,' in his verified response (e.g., as an attachment), not simply reference a summary of that statement." (Doc. No. 80 at 7 (footnote, emphasis, and citations omitted).)

The Court's ruling: Garrett's third response adds that he left the detention room several times but does not indicate when and for how long. This interrogatory is yet another example of a subject matter that is better suited for a deposition because Plaintiff could ask a series of questions about Garrett's whereabouts during the times he was absent as well as the duration of his absence each time. The deposition process allows for a back-and-forth question and answer process, whereas written discovery does not.

Nonetheless, Garrett's response is impermissibly general. Garrett is therefore ORDERED TO RESPOND IN GOOD FAITH. Specifically, Garrett is to set forth the following to the best of his ability: (a) Whether he was present with Kluge and Plaintiff at all times from the beginning to the end of the contact with Plaintiff; (b) if he was not present with Kluge at all times, how many times he left Kluge's side; (c) for each time he left Kluge's presence, when during the contact his absence occurred; (d) how long he was absent each time; and (e) what he was doing when he was absent. If Garrett does not have the present ability to remember each and every instance he was away from Kluge, or for how long he was absent, he should state so but nonetheless address the above as his memory permits. As Garrett's third response to this interrogatory and the Court's guidance demonstrate, Defendants' exasperated representation that there simply is no further information they can provide, see Doc. No. 82 at 2, is disingenuous and not well taken.

7. San Diego County, Special Interrogatory No. 21

Plaintiff propounded the following interrogatory: "As of August 8, 2006, DESCRIBE all of the training the DEFENDANT DEPUTIES had received from the San Diego County Sheriff's Department with

regard to investigating a suspected trespass, specifically including those situations wherein an individual fails to leave a property at the request of either the property owner or a law-enforcement [sic] officer." (Doc. No. 64-5 at 11.)

Defendant San Diego County's first response: "Objection: vague and ambiguous, indefinite as to time; seeks information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence; requests material not in the custody or control of this responding party; seeks privileged information in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence; seeks information protected from disclosure under the provision of the Federal Privacy Act; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information Act and Government Code § 6254(c); seeks records and information compiled for law enforcement purposes which are exempt from disclosure because production could constitute an unwarranted invasion of privacy. Without waiving the objections, academy and in-service training." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. The request is limited in scope so that Defendant shall provide Plaintiff with a list of deputy training encompassing the issues of excessive force and unlawful search." (Doc. No. 59 at 4.)

San Diego County's second response after the Court's order: "Objection: vague and ambiguous, indefinite as to time; seeks information not relevant to the subject matter of this action nor

reasonably calculated to lead to the discovery of admissible evidence; requests material not in the custody or control of this responding party; seeks privileged information in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence; seeks information protected from disclosure under the provision of the Federal Privacy Act; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information Act and Government Code § 6254(c); seeks records and information compiled for law enforcement purposes which are exempt from disclosure because production could constitute and unwarranted invasion of privacy. Without waiving the objections, academy and in-service training.

(1) California Commission on Peace Officer Standards and Training (POST)
Basic Course Workbook Series Student Materials
Learning Domain 20 Use of Force Version Two

(2) California Commission on Peace Officer Standards and Training (POST)
Basic Course Workbook Series Student Materials
Learning Domain 16 Search and Seizure Version Four

(3) San Diego County Sheriff Training Bulletin
William D. Gore, Sheriff December 2009
'Back to Basics' Training Bulletin Series

(4) San Diego County Sheriff Training Bulletin
William D. Gore, Sheriff September 2009 #2
Contacts, Detentions, Handcuffing & Pat Downs

(5) Field Training – SEARCHES

(6) Field Training – USE OF FORCE

(Doc. No. 64-5 at 11-12.)

Plaintiff's first objection: "The objections are frivolous and must be stricken; the Court has ordered defendant to respond on the merits. In terms of 'describing' the training of the 'defendant deputies,' it is woefully inadequate, as it only describes a portion of the 'identity of the material' referencing or relating to the training. It does not describe, e.g., the dates, place and participant of the training, or even what the training consisted of. Moreover, the list of documents included in the supplemental response directly contradict, and are inexplicably omitted from, the corresponding list of documents set forth in defendant Kluge's supplemental response to Request for Production No. 16 (as well as this defendant's Supplemental Amended Response to Special Interrogatory No. 22)." (Doc. No. 64-5 at 12-13.)

San Diego County's's third response: "Objection: vague and ambiguous, indefinite as to time; seeks information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence; requests material not in the custody or control of this responding party; seeks privileged information in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence; seeks information protected from disclosure under the provision of the Federal Privacy Act; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information Act and Government Code § 6254(c); seeks records and information compiled for law enforcement purposes which are exempt from disclosure because

production could constitute and unwarranted invasion of privacy. Without waiving the objections, academy and in-service training.

(1) California Commission on Peace Officer Standards and Training (POST)

Basic Course Workbook Series Student Materials

Learning Domain 20 Use of Force Version Two

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(2) California Commission on Peace Officer Standards and Training (POST)

Learning Domain 16 Search and Seizure Version Four

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(3) San Diego County Sheriff Training Bulletin

William D. Gore, Sheriff December 2009

Back to Basics Training Bulletin Series

“The Basics” include:

- Maintaining situational awareness
- Recognize and respond to danger signs
- Recognize and use cover

- Use clear and accurate radio communications
- Request backup, wait for backup, and utilize backup as a resource
- Pre-plan and work together as a team when additional backup arrives

(4) San Diego County Sheriff Training Bulletin

William D. Gore, Sheriff September 2009 #2

Contacts, Detentions, Handcuffing & Pat Downs

- Consensual encounters
- Detentions:
- Pat Downs or Frisks
- Handcuffing During a Detention

(5) Field Training – SEARCHES

(6) Field Training – USE OF FORCE

(Doc. No. 80, Ex. E at 3-5.)

Plaintiff's second objection: "Defendant San Diego County's Second Supplemental Amended Response is obstreperous. Defendant agreed, but has failed, to cure the defects set forth in [Plaintiff's objection]. As set forth therein, the objections are frivolous and must be stricken; the Court has ordered defendant to respond on the merits. Defendant agreed, through its counsel[,] to 'describe' (as defined by Bashkin in the set of interrogatories served on it) the training of the 'defendant deputies.' Defendant has reneged on that agreement. Its response only describes a portion of the 'identity of the material' referencing or relating to the training. It does not describe, e.g., the dates, place and participant of the training, or even what the training consisted of. The deficiencies are magnified by defendants' failure to produce the documents listed in the response." (Doc. No. 80 at 8.)

The Court's ruling: This disputed interrogatory is yet another clear example of both the nature of Plaintiff's demanding requests and Defendants' dilatory behavior. On the one hand,

Plaintiff demands that the County provide a detailed narrative response that includes the deputies' training, including the date, place of training, and persons who attended the training. This undertaking will require the County to expend a considerable amount of time and effort, and its response may be voluminous. Keeping in mind the nature of the discovery tool employed here--*i.e.*, written discovery--Plaintiff is not entitled to such a minutely-detailed response. Requiring the County to set forth all of the responsive training in a written discovery response is an overly burdensome and unreasonable mandate. That same information is available in the books and other printed materials the County has identified, and it makes no sense to require the County to re-write those books and materials in its discovery responses. Moreover, a deposition of a defensive tactic instructor or field training officer is a more appropriate method to explore use of force training because of the amount of time allotted and the real-time ability to mine the depths of the deponents' knowledge. If Plaintiff has not deposed such a person, he cannot use written discovery as a deposition substitute now.

For its part, the County's responses demonstrate its failure to cooperatively participate in good faith in the discovery process at times. The deputies' training is a relevant subject matter in this case. After a court order and 3 responses, all the County can muster is to provide table of contents entries without much in the way of substance. Importantly, unlike the interrogatories that address policies and procedures, the County has not stated that it has produced the materials it identifies in this interrogatory.

Thus, all Plaintiff is left with is a table of contents for books that have not been produced to him.

Having reviewed what the County has identified in its third response, the Court finds that the information contained in the books and materials identified is responsive so long as the materials are produced to Plaintiff, who can then review the training materials himself. The County is not required to prepare another written response. Therefore, the County is ORDERED to produce to Plaintiff hard copies of all of the books and printed materials identified in its third response. Further, the County may not continue its practice of providing piecemeal responses. The County is further ORDERED to produce any other books or materials that bear on use of force and search and seizure and which have not been identified to date. The County's production shall be complete and include all relevant documents presently within its knowledge. Withholding or failing to produce relevant documents may result in appropriate sanctions, as this is now the second court order compelling a response to this interrogatory.

B. Disputes on Which the Court Previously Reserved Judgment

1. San Diego County, Special Interrogatory No. 4

Plaintiff propounded the following interrogatory: "Please set forth each and every fact that supports YOUR denial of the allegations contained in Paragraph 18 of the COMPLAINT" (Doc. No. 64-5 at 3.)

Defendant San Diego County's first response: "Objection. The interrogatory is vague and ambiguous. Without waiving the objection, no such policies exist and all deputies are thoroughly trained." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant shall provide facts that support its denial of Plaintiff's remaining claims. If the previously produced Internal Affairs file contains the responsive information, Defendant shall identify the responsive portions by Bates stamp number." (Doc. No. 59 at 3.)

San Diego County's second response: "Objection. The interrogatory is vague and ambiguous. Without waiving the objection, no such policies exist. All deputies are thoroughly trained with respect to the use of force and searches and seizures in academy training, during patrol field training[,] and with regular in-service training bulletins." (Doc. No. 64-5 at 3.)

Plaintiff's objection: "Defendant supplied inadequate facts. Paragraph 18 of the Complaint set [sic] forth as follows:

> 18. Defendant SAN DIEGO COUNTY either maintained a policy that allowed its [S]heriff's [D]eputies, including KLUGE and GARRETT, to engage in the lawlessness set forth [in the Complaint], or acted recklessly, intentionally or with gross negligence in failing to adequately train its [S]heriff's [D]eputies, including KLUGE and GARRETT, with regard to the aforementioned unlawful acts.

The objection is frivolous and must be stricken; the Court has Ordered defendant to respond on the merits. The response does not supply facts, but only conclusions, i.e., 'all deputies are thoroughly trained.' Incorporating Response No. 21 does not solve the problem because that interrogatory is materially different than No. 4[.] No. 21 involves 'suspected trespass,' while No. 4 involves 'the use of force and searches and seizure.' Plaintiff is entitled to know exactly how the defendant deputies were specifically trained with regard to 'the use of force and searches and seizures.'" (Id. at 4.)

The Court's ruling: The County shall not be compelled to further respond. The County's answer is responsive. First, the County responds to Paragraph 18's allegation that a policy of lawlessness existed as follows: No such policy existed. Based on the non-existence of such a policy, there simply is no further information to extract from the County on this topic. Second, in response to Paragraph 18's allegation that the deputies were not sufficiently trained, the County simply states that they were adequately trained. This is yet another general response which the County certainly could have elaborated. However, given that other interrogatories address this training issue, the County need not respond to this interrogatory so long as it complies with the Court's Order as to the others. Specifically, Defendants' compliance with the Court's Order with respect to Interrogatory No. 21 to San Diego County and Interrogatory No. 4 to Kluge will be deemed responsive to the instant interrogatory since the training materials support the County's denial that the deputies were insufficiently trained.

2. <u>San Diego County, Special Interrogatory No. 12</u>

Plaintiff propounded the following interrogatory: "DESCRIBE the reasons for the use of force against BASHKIN, as alleged in the COMPLAINT, and include the following:

(a) The type of force used;

(b) DESCRIBE the reason(s) for each use of force;

(c) The circumstances that led the DEFENDANT DEPUTIES to believe there was probable cause to use force against BASHKIN;

(d) All details involving the use of force; and

(e) Whether BASHKIN was charged with anything as a result

and, if so, the specific charge.

(Doc. No. 64-5 at 6.)

Defendant San Diego County's first response: "Not applicable." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant's current response of not applicable is non responsive to the question asked." (Doc. No. 59 at 3.)

San Diego County's second response: "Deputy Kluge handcuffed Bashkin in order to escort him out of the casino after he had been expelled. He was handcuffed for officer safety and because he threatened suicide and had refused to leave the casino after being expelled. No charges resulted." (Doc. No. 64-5 at 7.)

Plaintiff's objection: "The response is non-responsive as to the use of force identified in paragraph 10 of the Complaint (and referenced by Kluge in his Internal Affairs Statement): 'pinning PLAINTIFF's wrists behind his back.' As to the response to the one type of force identified - handcuffing - respondent failed to respond to subsection (d); i.e., defendant failed to provide '[a]ll details involving the uses of force." (Id.)

The Court's ruling: The County shall not be compelled to further respond. By this interrogatory, Plaintiff apparently attempts to force the County to admit that Kluge pinned Plaintiff's wrists behind his back. The County apparently denies this occurred because it identifies "handcuffing" as the only use of force employed against Plaintiff. Again, this is a topic more aptly explored in Kluge's deposition than through written interrogatories. In any event, the County has sufficiently responded to the interrogatory as

drafted. The pinning of Plaintiff's wrists behind his back was not included in the interrogatory's verbiage; the subject matter was "use of force" in general. In response, San Diego County stated that Plaintiff was handcuffed. Although this response is not one that pleases Plaintiff, the Court will not compel the County to further respond as Plaintiff sees fit to dictate. If the County avers Kluge did not pin Plaintiff's wrists behind his back, the Court declines to force it to state otherwise.

3. San Diego County, Special Interrogatory No. 13

Plaintiff propounded the following interrogatory: "DESCRIBE the reasons for the use of restraint against BASHKIN, as alleged in the COMPLAINT, and include the following:

(a) The type of restraint used;

(b) DESCRIBE the reason(s) for each restraint;

(c) The circumstances that led the DEFENDANT DEPUTIES to believe there was probable cause to use restraint against BASHKIN;

(d) All details involving the use of those restraints; and

(e) Whether BASHKIN was charged with anything as a result and, if so, the specific charge.

(Doc. No. 64-5 at 7.)

Defendant San Diego County's first response: "Objection. The interrogatory is vague and ambiguous. Without waiving the objection, Plaintiff was briefly handcuffed because he was angry and [sic] agitated and had threatened suicide. Deputies were concerned for their safety and his safety. No charges were involved." (Id.)

The Court ordered: "GRANTED IN PART AND DENIED IN PART. Defendant shall provide a further response only to portion (d) of the interrogatory that requests details involving any restraints used against Plaintiff. Defendant may cite portions of Defendant Kluge's deposition if responsive and sufficient to describe details regarding use of restraint in the incident." (Doc. No. 59 at 4.)

San Diego County's second response: "Objection. The interrogatory is vague and ambiguous. Without waiving the objection, Plaintiff was briefly handcuffed because he was angry and [sic] agitated and had threatened suicide. Deputies were concerned for their safety and his safety. No charges were involved. See Deposition of Kluge at pp. 174-207." (Doc. No. 64-5 at 8 (emphasis added to highlight new response).)

Plaintiff's objection: "The objection is frivolous and must be stricken; the Court has ordered defendant to respond on the merits. Furthermore, large portions of the deposition cited (pp 174-207) are non-responsive and far too broad. Defendant must specify the relevant, responsive portions." (Id.)

The Court's ruling: The Court will not compel the County to engage in the rote exercise of further identifying the exact portion of Kluge's deposition. Plaintiff has equal access to the deposition transcript. Moreover, the nature of this interrogatory's subject matter makes it much more suited for exploration during a deposition, which Plaintiff has taken.

4. San Diego County, Special Interrogatory No. 19

Plaintiff propounded the following interrogatory: "State all facts concerning YOUR knowledge or understanding of whether BARONA

(including its management or employees) made audio or visual tapes or recordings of any aspect of the INCIDENT and what became of them. Include the following:

(a) IDENTIFY each tape or recording made (including who or what was being taped or recorded);

(b) State how and when YOU became knowledgeable of each tape or recording;

(c) State whether and when YOU heard or saw each tape or recording;

(d) State whether and when YOU obtained a copy of each tape or recording;

(e) IDENTIFY each PERSON who has knowledge of each tape or recording;

(f) State the current location of each tape or recording; and

(g) State whether each tape or recording has been destroyed and, if so: (1) the date of its destruction; (2) the reason for its destruction; (3) the IDENTITY of the PERSON who destroyed it; and (4) DESCRIBE any retention policy directing its destruction."

(Doc. No. 64-5 at 7-8.)

Defendant San Diego County's first response: "Objection. This interrogatory seeks information not in the custody of or control of this responding party." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant shall provide an amended response so that Plaintiff may ascertain Defendant's knowledge of any videotapes or recordings of the incident." (Doc. No. 59 at 4.)

San Diego County's second response: "The department never had any tapes. Sgt. Robert Haley contacted the casino to inquire about tapes on March 9, 2007 and was advised by Security Supervisor Joe Martin that they did not save the tapes." (Doc. No. 64-5 at 9.)

Plaintiff's objection: "The response is way too narrow and intentionally evasive; i.e., it does not come close to 'stat[ing] all facts' of which the defendant is knowledgeable, as required. For instance, there is a witness identified in the Internal Affairs File who was interviewed at length by defendant representative Sgt. Haley on this very issue! The response establishes that [D]efendant is attempting to coverup [sic] its full knowledge of the tapes/recordings of the INCIDENT. The ability to respond fully and properly to each subsection of the interrogatory is well within the control of defendant." (Id.)

The Court's ruling: San Diego County shall not be compelled to further respond. Its response is neither evasive nor non-responsive. The County represents that it never had custody of any video tapes and was told that Barona, an entity not affiliated with the County, does not save the tapes. Nonetheless, Plaintiff essentially accuses the County of lying, covering up evidence, and demands that the County provide a truthful response. The Court, of course, has no way of knowing whether the County is lying. All the Court has is the County's verified response pursuant to Rule 11, coupled with Plaintiff's implication, based on his personal belief, that the County is lying. The Court finds that the County's representations are acceptable and responsive given that it was not responsible for creation of any alleged tape *ab initio*.

Moreover, the County is not the correct entity to which inquiry into this subject matter should be directed. As just one demonstrative example, Plaintiff demands that the County provide Barona's retention policy. Barona Casino, an autonomous entity that is separate and distinct from the County, controlled the premises, all videographic equipment, all technical knowledge, and any alleged tapes used to surveil Plaintiff during the subject incident. As a result, Barona, not the County, is the entity with the most knowledge on this interrogatory's subject matter.

5. San Diego County, Special Interrogatory No. 22

Plaintiff propounded the following interrogatory: "As of August 8, 2006, DESCRIBE all of the policies and procedures of the San Diego County Sheriff's Department with regard to its deputies' investigation of a suspected trespass, including those situations wherein an individual fails to leave a property at the request of either the property owner or a law-enforcement [sic] officer." (Doc. No. 64-5 at 13.)

Defendant San Diego County's first response: "Objection: vague and ambiguous; overbroad; calls for information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant shall provide Plaintiff with information encompassed in various correspondence regarding the existence of policies regarding suspected trespass." (Doc. No. 59 at 4.)

San Diego County's second response: "Objection: vague and ambiguous; overbroad; calls for information not relevant to the

subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Such policies and procedures have already been provided to Plaintiff by letter dated January 10, 2010, as set forth below:

This is a summary of Plaintiff's requests and documents produced.

(1) Use of force: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(2) Use of restraint: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(3) Use of handcuffs: 2.49 and 6.48; Use of Force Addendum 'F'

(4) Detaining an individual: 2.48 and 2.51

(5) Search & seizure: 2.51

(6) Handling/investigating a citizen's arrest: 6.110

(7) Penal Code § 602 suspects and investigations: No policy exists

(8) Penal Code § 602 letters: No policy exists

(9) Handling/investigating a suspect/individual who refuses to leave a property/premises when asked by its owner/employees/[S]heriff's [D]eputies to leave: No policy exists

(10) Use and preparation of 'CAD' printout ([a.k.a.] 'Unit History') dispositions ([a.k.a.] 'comments'), including: (a) when, why and how a deputy is supposed to provide a CAD disposition; and (b) what information is supposed to be included in a CAD disposition: No policy exists

(11) Requirements re the preparation of written reports (other than a CAD disposition) by a [S]heriff's [D]eputy (e.g., when an incident report is required, etc.): 2.41 and 6.71

(12) Taping a suspect or detainee (including but not limited to (a) the rights of the individual; (b) the use of the tape; and (c) the preservation of the tape): 6.105

(13) Documenting the following: 2.41, 6.71

(a) Investigations/evaluations that result in arrest: 6.71

(b) Investigations/evaluations that do not result in arrest: 6.71

(c) [C]riminal activity: 6.71

(d) [S]uspected criminal activity: No policy exists

(e) [U]se of force: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(f) [U]se of physical contact: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(g) [U]se of handcuffs: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(h) [U]se of restraint [sic]: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(i) [C]itizen's arrests: 6.110

(j) [D]etaining an individual: 2.48 and 2.51

(k) [S]earches and/or seizures: 2.51

(l) W&I Code § 5150 investigations/evaluations: 6.32, 6.113

(m) Penal Code § 602 investigations/evaluations:

6.32, 6.113

(n) [S]uspected trespassing: No policy exists

(o) [D]uties of deputy in training: 10.1-10.4, 10.6, 10.9

(p) [T]he taping of a suspect or detainee: 6.105

(Doc. No. 64-5 at 13-15.)

Plaintiff's objection: "The objections are frivolous and must be stricken; the Court has ordered defendant to respond on the merits. Furthermore, pursuant to the Order, respondent was to provide 'information' regarding the specific training encompassed in the various referenced policies and procedures, not just a verified summary of the documents produced." (Id. at 15.)

The Court's ruling: The County shall not be compelled to further respond. The County has represented that it has produced a long list of documents that evidence the relevant policies and procedures. The County is not required to re-write those materials in narrative format simply because Plaintiff mandates so. The information exists in written form, and it would be unreasonable and unduly burdensome to require the County to re-write it. The Court accepts the County's representation that it has produced these documents to Plaintiff. No further response to this interrogatory is necessary.

6. Garrett, Special Interrogatory No. 6

Plaintiff propounded the following interrogatory: "Do YOU contend that on August 8, 2006, PAUL BASHKIN refused to leave BARONA at the request of either its owner(s) or law-enforcement [sic] officer? If so, state each and every fact that supports YOUR contention." (Doc. No. 64-4 at 4.)

Defendant Garrett's first response: "Yes. We were advised that he had refused to leave the casino after a request by casino security and he had threatened suicide." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant must provide a more detailed response to allow Plaintiff to ascertain specific details surrounding the incident." (Doc. No. 59 at 5.)

Garrett's second response: "Yes. He was given an expulsion letter by a casino employee and became more upset. Deputy Kluge told him if he remained on the property he could be arrested for trespass. Plaintiff continued to make demands for return of his money and for free food. Kluge spent some time persuading him to leave voluntarily." (Doc. No. 64-4 at 4.)

Plaintiff's objection: "The response does not state 'each and every fact' that supports respondent's contentions; i.e., it is in violation of the court order that '[d]efendant must provide a more detailed response." For instance: how does the respondent know that BASHKIN was 'given an expulsion letter by a casino employee'; who was the 'casino' employee'; what were the specific 'demands' that BASHKIN allegedly made; how did Kluge 'persuade' BASHKIN to leave voluntarily? Further, respondent states that BASHKIN 'became **more** upset' - 'became **more** upset' than what? Respondent has not set forth any fact establishing that BASHKIN was upset in the first place. Moreover, a portion of this response - regarding BASHKIN leaving 'voluntarily' - contradicts respondent's Response to Interrogatory No. 9, wherein respondent states BASHKIN 'refused to leave the premises after being requested numerous times to leave.'" (Id. at 4-5.)

The Court's ruling: No further responses shall be ordered. While Plaintiff attempts to spin the Court's own words in his favor, the "failure" to provide "each and every fact" is not a violation of the Court's order to provide a "more detailed" response. Given that Plaintiff has now had an opportunity to take depositions, which afforded him the opportunity to explore this subject in depth, Garrett's second response is sufficiently responsive and Plaintiff's interrogatory is effectively redundant. See Johnson v. Couturier, 261 F.R.D. 188, 192 (E.D. Cal. 2009). Moreover, since Plaintiff seeks Garrett's recollection of events, this question is more appropriately posed during deposition than through written discovery. See Shoen v. Shoen, 5 F.3d 1289, 1297 (9th Cir. 1993).

7. Garrett, Special Interrogatory No. 9

Plaintiff propounded the following interrogatory: "Did YOU WITNESS PAUL BASHKIN violate any laws on August 8, 2006. If so, respond as follows:

(a) State the specific law(s) that he violated;

(b) DESCRIBE how he violated the law; and

(c) IDENTIFY all MATERIAL that supports this contention." (Doc. No. 64-4 at 5.)

Defendant Garrett's first response: "(a) Penal Code section 602.1. (b) He interfered with the casino by obstructing or intimidating the staff and refused to leave the premises after being requested to leave by casino staff. (c) Casino incident report." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. The request is limited in scope to Defendant's reasonable suspicion to believe that he observed

Plaintiff violate a law on August 8, 2006, and what facts he observed that lead to this belief, if any." (Doc. No. 59 at 4.)

Garrett's second response: "(a) Trespass (b) Deputy Kluge and I were advised by casino staff that Plaintiff had interfered with the casino by threatening suicide. He was given an expulsion letter by security after which he refused to leave the premises after being requested numerous times to leave. (c) Casino incident report, expulsion letter." (Doc. No. 64-4 at 5-6.)

Plaintiff's objection: "The interrogatory is solely concerned with what respondent WITNESSED; e.g., what he 'observed.' In the Special Interrogatories propounded on Garrett, 'WITNESSED' is defined as follows: '"WITNESSED" means, see and hear or saw or heard.' The first sentence of respondent's response to subsection (b) refers to events not WITNESSED by respondent. If respondent WITNESSED the events set forth in the second sentence of his response to subsection (b), then he must properly 'DESCRIBE' them, as that term is defined in the Special Interrogatories propounded on Garrett:

> 'DESCRIBE' means, provide the following information, to the extent known, with respect to the act, transaction or tangible thing: (a) the date it occurred; (b) the place where it occurred; (c) the IDENTITY of each participant and on whose behalf the participant was acting; (d) the nature and substance of all communications that occurred in connection with it; and (e) the IDENTITY of all MATERIAL referring to or reflecting it.

Finally, respondent has failed to respond properly to subsection (c), by failing to properly IDENTIFY the purported 'expulsion letter,' relied upon in his response. In the Special

Interrogatories propounded on Garrett, 'IDENTIFY' is defined as follows:

> 'IDENTIFY' OR 'IDENTITY' means, with respect to a PERSON: (a) the PERSON's full name; (b) present or last known address; (c) telephone number; and (d) the present or last known place of employment and job title referring to a natural person. With respect to a MATERIAL: (a) the type of MATERIAL; (b) the general subject matter of the MATERIAL; (c) the date of the MATERIAL; (d) the name and addresses of the authors and recipients of the MATERIAL; (e) the location of the MATERIAL; (f) the IDENTITY of the PERSON who has possession or control of the MATERIAL; and (g) whether the MATERIAL has been destroyed and, if so, (1) the date of its destruction, (2) the reason for its destruction, (3) the IDENTITY of the PERSONS who destroyed it, and (4) any retention policy directing its destruction."

(Id. at 6 (emphasis omitted).)

The Court's ruling: No further response shall be ordered. Garrett has identified a criminal statute in response to whether he witnessed Plaintiff commit a crime. To the extent that Plaintiff seeks a narrative of Garrett's recollection of what he witnessed, Plaintiff has had the opportunity to take depositions to thoroughly explore this topic.

8. Garrett, Special Interrogatory No. 11

Plaintiff propounded the following interrogatory: "Based on what you WITNESSED, DESCRIBE how the INCIDENT occurred." (Doc. No. 64-4 at 7.)

Defendant Garrett's first response: "See response to Interrogatory No. 1." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant must provide more details regarding his observation of the incident. If the answer to Interrogatory 9 is sufficiently detailed, Defendant may reference that response in his answer." (Doc. No. 59 at 5.)

Garrett's second response: "Deputy Kluge and I were advised by casino staff that Plaintiff had interfered with the casino by threatening suicide. He refused to leave the premises after he was given an expulsion letter by security after being requested to leave numerous times. My complete statement to Internal Affairs and the Report have been provided to Plaintiff and my statement is summarized in the report at pp. 24-27." (Doc. No. 64-4 at 7.)

Plaintiff's objection: "First, the response is in violation of the court order that '[d]efendant must provide more details. . . .' The few details actually provided are sketchy and conclusory at best. Second, only the description of what respondent actually WITNESSED is relevant; i.e., 'his observation of the INCIDENT.' Everything else is non-responsive and must be stricken/deleted. Third respondent cannot incorporate by reference his 'complete statement to Internal Affairs,' given that: (a) the Internal Affairs File only contains a summary of that statement; (b) it has not been authenticated or properly incorporated into his response; and (c) the court order did not allow him to do this. Finally, what 'Report' is being referenced by Garrett?" (Id.)

The Court's ruling: No further response shall be ordered. As previously explained in this Order, Plaintiff again seeks a narrative account of the entire incident, which is an exercise more suited for depositions, which Plaintiff has conducted.

9. Garrett, Special Interrogatory No. 15

Plaintiff propounded the following interrogatory: "Please DESCRIBE each and every policy or procedure of the San Diego County Sheriff's Department, with regard to how one of its deputies is supposed to handle a situation wherein an individual fails to leave

a property at the request of either the property owner or law-enforcement [sic] officer." (Doc. No. 64-4 at 9.)

Defendant Garrett's first response: "Objection. The request is vague and ambiguous, overbroad and unlimited in scope. Without waiving the objection, a law enforcement officer may arrest an individual who fails to leave after a request by the property owner and a law enforcement officer." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant shall provide a response that details his knowledge of the requested policies and procedures." (Doc. No. 59 at 5.)

Garrett's second response: "Objection: vague and ambiguous; overbroad; calls for information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Such policies and procedures have already been provided to Plaintiff by letter dated January 10, 2010, as set forth below:

This is a summary of Plaintiff's requests and documents produced.

(1) Use of force: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(2) Use of restraint: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(3) Use of handcuffs: 2.49 and 6.48; Use of Force Addendum 'F'

(4) Detaining and individual: 2.48 and 2.51

(5) Search & seizure: 2.51

(6) Handling/investigating a citizen's arrest: 6.110

(7) Penal Code § 602 suspects and investigations: No policy exists

(8) Penal Code § 602 letters: No policy exists

(9) Handling/investigating a suspect/individual who refuses to leave a property/premises when asked by its owner/employees/[S]heriff's [D]eputies to leave: No policy exists

(10) Use and preparation of 'CAD' printout ([a.k.a.] 'Unit History') dispositions ([a.k.a.] 'comments'), including: (a) when, why and how a deputy is supposed to provide a CAD disposition; and (b) what information is supposed to be included in a CAD disposition: No policy exists

(11) Requirements re the preparation of written reports (other than a CAD disposition) by a [S]heriff's [D]eputy (e.g., when an incident report is required, etc.): 2.41 and 6.71

(12) Taping a suspect or detainee (including but not limited to (a) the rights of the individual; (b) the use of the tape; and (c) the preservation of the tape): 6.105

(13) Documenting the following: 2.41, 6.71

(a) Investigations/evaluations that result in arrest: 6.71

(b) Investigations/evaluations that do not result in arrest: 6.71

(c) [C]riminal activity: 6.71

(d) [S]uspected criminal activity: No policy exists

(e) [U]se of force: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(f) [U]se of physical contact: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(g) [U]se of handcuffs: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(h) [U]se of restraint [sic]: 2.49 and 6.48; Use of Force Addendum 'F' dated 1/5/06

(i) [C]itizen's arrests: 6.110

(j) [D]etaining an individual: 2.48 and 2.51

(k) [S]earches and/or seizures: 2.51

(l) W&I Code § 5150 investigations/evaluations: 6.32, 6.113

(m) Penal Code § 602 investigations/evaluations: 6.32, 6.113

(n) [S]uspected trespassing: No policy exists

(o) [D]uties of deputy in training: 10.1-10.4, 10.6, 10.9

(p) [T]he taping of a suspect or detainee: 6.105

(Doc. No. 64-4 at 9-10.)

Plaintiff's objection: "The objection is frivolous and must be stricken; the Court has ordered [D]efendant to respond on the merits. Furthermore, pursuant to the Order, respondent was to provide 'a response that details his knowledge of the requested policies and procedures,' not a summary of the documents produced." (Id. at 11.)

The Court's ruling: No further response shall be ordered. As previously explained, this interrogatory again seeks a narrative re-creation of policies and procedures that exist in print format.

Moreover, buried within Garrett's response is his representation that such policies do not exist. (See Garrett's second response at subsections (7), (8), and (9).) This representation is responsive to Plaintiff's interrogatory.

10. Garrett, Special Interrogatory No. 21

Plaintiff propounded the following interrogatory: "Please state if YOU WITNESSED HOWARD KLUGE detain PAUL BASHKIN on August 8, 2006? [sic] If so, DESCRIBE what YOU witnessed in conjunction with each act." (Doc. No. 64-4 at 12.)

Defendant Garrett's first response: "I observed a 5150 evaluation and Mr. Bashkin being escorted out of the casino where he elected to leave on a bus." (Id.)

The Court previously ordered: "DEFENDANT IS COMPELLED TO PROVIDE A FURTHER RESPONSE. Defendant must provide the specific details he witnessed, as far as his memory permits." (Doc. No. 59 at 6.)

Garrett's second response: "I observed a 5150 evaluation and Mr. Bashkin being escorted out of the casino where he elected to leave on a bus. Everything I witnessed is contained in the statement I gave to Internal Affairs which has been provided to Plaintiff. My complete statement to Internal Affairs and the IA Report have been provided to Plaintiff and my statement is summarized at pp. 24-27." (Doc. No. 64-4 at 12.)

Plaintiff's objection: "First, the response is non-responsive to the first critical part of the interrogatory; it fails to

state whether respondent 'WITNESSED HOWARD KLUGE detain PAUL BASHKIN on August, 8, 2006." Second, the response is in violation of the court order that '[D]efendant must provide the specific details he witnessed[, as far as his memory permits].' The few details actually provided are sketchy and conclusory at best. Third, respondent cannot incorporate by reference his 'complete statement to Internal Affairs,' given that: (a) the IA Report only contains a summary of that statement; (b) it has not been authenticated or properly incorporated in his response; and (c) the court order did not permit him to do this." (Id.)

The Court's ruling: No further response shall be ordered. Although the Court agrees with Plaintiff that Garrett's second response lacks detail, Plaintiff nonetheless again seeks a narrative account of what someone witnessed, which written discovery is ill-suited to elicit. Plaintiff has had the opportunity to take depositions and has in fact done so.

11. Garrett, Special Interrogatory No. 24

Plaintiff propounded the following interrogatory: "IDENTIFY all previous complaints or lawsuits that have been made or filed against YOU in the last ten years. Include the following:

(a) IDENTIFY the parties to those complaints or lawsuits;

(b) Set forth the court, case number, date and caption;

(c) Whether the complaint or lawsuit was based on facts leading to an arrest;

(d) The name, address, and telephone number of any attorney representing any of the parties to those complaints or lawsuits;

(e) Whether the claim or action has been resolved or is

pending, and if resolved, its outcome; and

(f) A description of the claimed injuries.

(Doc. No. 64-4 at 14.)

Defendant Garrett's first response: "Objection: The requests [sic] seeks inadmissible evidence of complaints involving incidents after the subject incident involving the plaintiff; seeks privileged information pertaining to personnel and internal affairs matters in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence per Evidence Code § 1040; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information act; information sought is protected from the disclosure under the provisions of the Federal Privacy Act; seeks records and information compiled for law enforcement purposes which are exempt from disclosure because production could constitute an unwarranted invasion of privacy; seeks non-discoverable and inadmissible information pertaining to disciplinary recommendations; seeks information reflecting advisory opinions, consultations, recommendations and deliberations from disclosure by the deliberative process privilege; seeks information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery admissible evidence. Without waiving these objection, and to the extent this request seeks the identity of lawsuits in which propounding party is a named defendant, that information is equally available to all parties." (Id.)

The Court previously ordered: "Plaintiff's interrogatory as posed is over broad. Defendant shall provide an amended response

regarding any lawsuit involving excessive force, unlawful search and seizure, or trespass, from the date of his first employment as a deputy to the present date." (Doc. No. 59 at 6.)

Garrett's second response: "Objection: The requests [sic] seeks inadmissible evidence of complaints involving incidents after the subject incident involving the plaintiff; seeks privileged information pertaining to personnel and internal affairs matters in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence per Evidence Code § 1040; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information act; information sought is protected from the disclosure under the provisions of the Federal Privacy Act; seeks records and information compiled for law enforcement purposes which are exempt from disclosure because production could constitute an unwarranted invasion of privacy; seeks non-discoverable and inadmissible information pertaining to disciplinary recommendations; seeks information reflecting advisory opinions, consultations, recommendations and deliberations from disclosure by the deliberative process privilege; seeks information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery admissible evidence. Without waiving these objection, none involving excessive force[,] unlawful search and seizure[,] or trespass." (Doc. No. 64-4 at 15 (emphasis added to highlight new response).)

Plaintiff's objection: "The objections are frivolous, invalid and must be deleted; the Court has ordered [D]efendant to respond on the merits." (Id.)

The Court's ruling: No further response shall be ordered. Garrett's second response ("[N]one involving excessive force[,] unlawful search and seizure[,] or trespass." (emphasis added)) is responsive and complies with the Court's prior Order ("Defendant shall provide an amended response regarding any lawsuit involving excessive force, unlawful search and seizure, or trespass . . . .").

12. Kluge, Interrogatory No. 6

Plaintiff propounded the following interrogatory: "In response to Category No. 6 of BASHKIN's request for production of documents, YOU produced a photographic copy of a wall containing a sign or notice stating that: 'THIS ROOM IS BEING MONITORED BY AUDIO SURVEILLANCE'. State whether that sign or notice was on the wall of the BARONA holding room in which BASHKIN was detained during the INCIDENT." (Doc. No. 64-4 at 5.)

Defendant Kluge's response: "I provided no photographic copy of a wall containing a sign or notice stating: 'THIS ROOM IS BEING MONITORED BY AUDIO SURVEILLANCE.' If such a photographic copy was produced, it was provided to Mr. Bashkin by Mr. James Chapin who is my attorney in this matter. I have no knowledge of this sign or if it's even located on the Barona Casino property." (Id.)

Plaintiff's objection: "The response is frivolous, evasive and non-responsive on multiple counts. First, 'YOU' was defined in the interrogatories as including 'YOUR attorney.' Second, discovery is answered or responded to by party, not their attorney. Third, the knowledge of the attorney is imputed to and/or controlled by his

client. Bashkin is in receipt of 'Defendant Howard Kluge's Responses to Requests to Production Attached to the Notice of Deposition,' wherein Kluge responded that he 'produced' that photographic copy. Thus, Kluge's testimony denying having provided the 'photographic copy' is a misrepresentation of a material fact; i.e., perjury. Kluge, through his attorney, produced a 'photo-graphic copy' being sought in the interrogatory and, therefore, he must respond on the merits with the information that he controls through his attorney and is in the possession of either he or his attorney." (Id. (emphasis in original).)

The Court's ruling: KLUGE IS ORDERED TO RESPOND TO THIS INTERROGATORY IN GOOD FAITH. Whether Kluge produced the sign, or his attorney produced it on his behalf, is immaterial. The essence of the interrogatory is whether Kluge recalls such a sign being present in the holding room. If Kluge did not produce the photograph and another party did, he should state so, but should nonetheless state, as his memory permits, whether he recalls the sign's presence in the holding room on the day in question.

13. Kluge, Interrogatory No. 13

Plaintiff propounded the following interrogatory: "State all facts regarding how YOU came into possession of the copy of the 'casino expulsion letter' that YOU produced to BASHKIN in response to BASHKIN's request for production of documents." (Doc. No. 64-3 at 9.)

Defendant Kluge's response: "I did not produce a 'Casino Expulsion Letter' to Mr. Bashkin. The item was produced by Mr. James Chapin[,] my attorney in this matter. I have no knowledge as to how the item came into the possession of Mr. Chapin." (Id.)

Plaintiff's objection: "The response is frivolous, evasive and non-responsive on multiple counts. First, 'YOU' was defined in the interrogatories as including 'YOUR attorney.' Second, discovery is answered or responded to by party, not their attorney. Third, the knowledge of the attorney is imputed to and/or controlled by his client. Bashkin is in receipt of Kluge's responses to his requests to production of documents wherein Kluge responded that 'the Casino Expulsion Letter will be produced.' He subsequently produced it. Thus, Kluge's testimony denying having provided the 'Casino Expulsion Letter' is a misrepresentation of a material fact; i.e., perjury. Kluge, through his attorney, produced a 'Casino Expulsion Letter' being sought in the interrogatory and, therefore, he must respond on the merits with the information that he controls through his attorney and is in the possession of either he or his attorney." (Id. (emphasis in original).)

The Court's ruling: For the same reasons articulated in the Court's ruling on Kluge Interrogatory No. 6, immediately above, KLUGE IS ORDERED TO RESPOND TO THIS INTERROGATORY IN GOOD FAITH. If he has no knowledge of the expulsion letter, he should state so.

14. Kluge, Interrogatory No. 14

Plaintiff propounded the following interrogatory: "State all facts supporting YOUR suspicion or belief that BASHKIN was trespassing when he did not immediately leave BARONA upon his receipt of the BARONA 'expulsion letter.'" (Doc. No. 64-3 at 9.)

Defendant Kluge's response: "Mr. Bashkin was given both written and verbal notification that he was no longer allowed on the Barona Casino property by Mr. George Denny and myself, therefore Mr. Bashkin was clearly informed that if he remained at the location or

came back to the property in the future he would be violating trespassing laws in the California Penal Code book. Based on the fact Mr. Bashkin was given these very clear and lawful orders to vacate the casino property[,] I believed Mr. Bashkin would have been violating the trespassing laws in the California Penal Code if he didn't leave the casino property during the incident." (Id. at 10.)

Plaintiff's objection: "Respondent did not state 'all' of the facts, and those facts provided were conclusory. If the 'orders' Bashkin was given were 'very clear,' certainly the responsive facts in support thereof are not. What was the 'verbal and written' notification that Bashkin was allegedly given? Was Bashkin actually 'informed that if he remained at the location or came back to the property in the future he would be violating the trespassing laws in the California Penal Code book,' or is that merely respondent's conclusion?" (Id.)

The Court's ruling: For reasons explained in detail herein, no further response shall be ordered.

15. Kluge, Interrogatory No. 15

Plaintiff propounded the following interrogatory: "Was the copy of the 'casino expulsion letter' that YOU produced to BASHKIN in response to BASHKIN's request for production of documents[] a true and correct copy of the 'expulsion letter' that George Denny gave BASHKIN at BARONA on August 8, 2006?" (Doc. No. 64-3 at 10.)

Defendant Kluge's response: "I did not produce a 'Casino Expulsion Letter' to Mr. Bashkin. The item was produced by Mr. James Chapin[,] my attorney in this matter. However, I read the letter and it appeared to be the same letter that was given to Mr.

Baskin [sic] on August 8, 2005 [sic], but I can't say for sure that is the case." (Id.)

Plaintiff's objection: "The first two sentences should be stricken." (Id. at 11.)

The Court's ruling: The Court declines Plaintiff's request to "strike" the first two lines of Kluge's response.

16. Kluge, Interrogatory No. 16

Plaintiff propounded the following interrogatory: "Describe with specificity each and every incident wherein YOU have been accused of using excessive force against an individual in YOUR capacity as a law-enforcement [sic] officer." (Doc. No. 64-3 at 11.)

Defendant Kluge's response: "Objection: The requests [sic] seeks inadmissible evidence of complaints involving incidents after the subject incident involving the plaintiff; seeks privileged information pertaining to personnel and internal affairs matters in a manner in violation of California Penal Code § 832.7 and Evidence Code § 1043; seeks disclosure of official information acquired in confidence per Evidence Code § 1040; disclosure of personnel, medical and similar files is an unwarranted invasion of personal privacy impermissible under the Freedom of Information act; information sought is protected from the disclosure under the provisions of the Federal Privacy Act; seeks records and information compiled for law enforcement purposes which are exempt from disclosure because production could constitute an unwarranted invasion of privacy; seeks non-discoverable and inadmissible information pertaining to disciplinary recommendations; seeks

information reflecting advisory opinions, consultations, recommendations and deliberations from disclosure by the deliberative process privilege; seeks information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery admissible evidence. Without waiving these objection, a lawsuit alleging excessive force entitled *Kenneth E. Lewis v. County of San Diego, Deputy Kluge, Deputy Burke*, Southern District of California, Case No. 04-CV-2592-IEG(RBB), is public record." (Id.)

Plaintiff's objection: "The response is non-responsive as to the relevance of the *Lewis* lawsuit. The request seeks a 'descri[ption] with specificity' of each '**incident** wherein YOU have been accused of using excessive force. Therefore, Kluge must 'describe with specificity' each and every 'incident' involving an accusation of his 'use of excessive force, exclusive of the accusations contained in the instant action." (Id. at 11-12 (emphasis in original).)

The Court's ruling: KLUGE IS ORDERED TO FULLY RESPOND AND DO SO IN GOOD FAITH. As Plaintiff correctly points out, the interrogatory requests each "incident," not "lawsuit." This information is relevant to this action, yet Kluge continues to provide incomplete responses. Kluge shall set for the following for each incident or occasion he was accused of excessive force as a law enforcement officer: (1) date of accusation; (2) entity to which accusation was made; (3) detailed description of the accusation; and (4) the outcome of investigation, if any.

17. Kluge, Interrogatory No. 17

Plaintiff propounded the following interrogatory: "Was the copy of the 'expulsion letter' that YOU lodged in support of YOUR

motion for summary judgment in this action[] a true and correct copy of the 'expulsion letter' that George Denny gave Bashkin at Barona on August 8, 2006?" (Doc. No. 64-3 at 12.)

Defendant Kluge's response: "This question was asked and answered in my response to question #15 above." (Id.)

Plaintiff's objection: "The response is frivolous, evasive[,] and non-responsive. Special Interrogatory Nos. 15 and 17 are materially different. According to the face page of Exhibit A of Docket #39-3 [Notice of Lodgment of Exhibits in Support of Motion for Summary Judgment], **Kluge** lodged a copy of the 'expulsion letter' in support of his 'motion for summary judgment in this action.' Therefore, he must disclose whether the copy of that letter that he lodged with his Motion was 'a true and correct copy of the 'expulsion letter' that George Denny gave BASHKIN at BARONA on August 8, 2006." (Id. (emphasis in original).)

The Court's ruling: No further response shall be ordered. Kluge Interrogatory Nos. 15 and 17 are nearly identical. In response to Interrogatory No. 15, Kluge responded that he reviewed the expulsion letter, and it appeared to be the one provided to Plaintiff but he could not be sure if it was the same one. Kluge's response is essentially, "Maybe. I do not know for certain," which is an acceptable response if Kluge in fact does not recall.

18. Kluge, Interrogatory No. 22

Plaintiff propounded the following interrogatory: "Identify with particularity each time YOU documented (e.g., in a report, statement or disposition, etc.) any suspicion or belief YOU had that BASHKIN had violated a trespassing law at BARONA on August 8, 2006." (Doc. No. 64-3 at 14.)

Kluge's response: "Mr. Bashkin was given both written and verbal notification[s] that he was no longer allowed on the Barona Casino property by Mr. George Denny and me. Therefore, Mr. Bashkin was clearly informed that he remained at the location or came back to the property in the future he would be violating the trespassing law(s) in the California Penal Code book. Based on the fact Mr. Bashkin was given these very clear and lawful orders to vacate the casino property[,] I believed that Mr. Bashkin would have been violating the trespassing law(s) in the California Penal Code if he didn't leave the casino property during this incident. Mr. Bashkin left the casino property, thus he didn't complete the act of violating any trespassing law(s) at Barona on August 8, 2006." (Id.)

Plaintiff's objection: "The response is **frivolous, evasive and completely non-responsive!** At best, it provides 'conclusory' facts regarding Bashkin's alleged potential trespassing, which has nothing to do with the information being sought. The interrogatory seeks any and all '**documentation**' of Kluge's suspicions or beliefs that Bashkin had 'violated a trespassing law at BARONA on August 8, 2006.' The response even provides examples of what is meant by 'document,' yet Kluge still evaded responding on point! The interrogatory is clear, straightforward and relevant, and Kluge must answer it." (Id. at 15 (emphasis in original).)

The Court's ruling: KLUGE IS ORDERED TO RESPOND IN GOOD FAITH. Kluge's response is completely non-responsive. As Plaintiff correctly points out, the interrogatory asked about documentation of Kluge's suspicion or belief of Plaintiff's alleged trespass. However, Kluge completely disregards the call of the question and

provides a generic account of the incident without mentioning any documentation whatsoever. If Kluge did not document the alleged trespass, he should state so. If he did document the alleged trespass in any way, he should set forth how he documented his suspicion or belief, whether it be on a Field Interview Report, CAD entry, *et cetera*. However, in no event may Kluge again ignore the actual question Plaintiff poses.

III. CONCLUSION

The parties are ORDERED to proceed consistently with this Order as set forth above. For those interrogatories which the Court has ordered further responses, Defendants are hereby on notice that further incomplete, partially responsive, evasive, or dilatory responses will be unacceptable. This is now the second Order on certain interrogatories, and Defendants have the benefit of the Court's guidance above. The Court has observed Defendants withhold information until compelled to reveal it by the Court, and even then do so without much detail. This practice is unacceptable. The Court will deem further improper responses as a direct and intentional violation of the Court's Order and appropriate sanctions may issue.

IT IS SO ORDERED

DATED: January 13, 2011

Hon. William V. Gallo
U.S. Magistrate Judge